Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 612 of 2001
(Old No. 218 of 1978)

The State

…….. Defendant / Appellant

Versus

Chandra Mohan
S/o Sri Hans Ram,
R/o Chana Khet, Tehri,
District Tehri Garhwal

…..……. Plaintiff / Respondent

Mr. Nand Prasad, learned Standing Counsel for the appellant - State.
Mr. D.C.S. Rawat, Advocate holding brief of Mr. Lokendra Dobhal, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred by the defendant / appellant, under Section 96 of the Code of Civil Procedure, 1908, is directed against the judgment and decree dated 17.03.1978, passed in Original Suit No. 32 of 1977, by the learned District Judge, Tehri Garhwal, whereby suit of the plaintiff / respondent for recovery of Rs. 33,984/- is decreed with costs and 6% interest per annum thereon.

2) Heard learned counsel for the parties and perused the lower court record.

3) Brief facts of the case, as narrated in the plaint, are that the plaintiffs / respondent, was a contractor for job No.

14 on Kilkileshwar –Silkakhal road in the District of Tehri Garhwal. In connection with said contract, on 13.02.1973. an agreement was entered into between the plaintiff and the Public Works Department of the defendant / appellant. The said contract consisted of two parts. The first part was a lump sum job for Rs. 88,488/- and the second part was for walling scuppers etc. for Rs. 5,788.44. The work started on 13.02.1973 and was to be completed by 12.11.1973. It had to be carried out in accordance with the site plan provided by the Public Works Department of the defendant. According to the plaintiff, the work was completed within the period allowed, but the defendant failed to measure the work within fifteen days of completion of the work till April, 1974. The measurement of the plaintiff / respondent's work was done in June 1974 and necessary entries were made in the measurement book at serial number 65 / L. The measurements recorded were signed by Mr. Rampal Singh, concerned Junior Engineer and the contractor himself. After physical verification of the work done, the final bill was prepared in the very month of June 1974 and said bill was scrutinized by concerned Assistant Engineer, Mr. Vasudev Tewari. The plaintiff has alleged that the final bill of Rs. 7,840/- was to be paid to him, apart from refund of security deposited to the tune of Rs. 9,427/-. However, in October 1974, it is alleged in the plaint, that Assistant Engineer, Public Works Department sent a letter to the plaintiff without clearing the final bill pointing out some defects in the work executed by him. In November 1974, Executive Engineer when approached, also told that fresh measurements are required in respect of the work

done. Instead of making payment of Rs. 7,840/- plus security refund of Rs. 9,427/-, totaling to Rs. 17,267/-, the Public Works Department of the defendant sent a notice to the plaintiff for recovery of Rs. 22,629/-. It is alleged by the plaintiff that an amount of Rs. 16717/- was illegally deducted by the defendant form the dues payable to the plaintiff in respect of the other contracts of Ghansali Ghuttu bridge, Jamni Jurana road and Ghansali Girder bridge. As such, the plaintiff has claimed Rs. 7,480.00 + Rs. 9,427.00 + Rs. 16,717.00 = 33,984.00, from the defendant.

4) The defendant / appellant contested the suit and filed its written statement denying that the work was completed by the plaintiff in terms of contract. According to the defendant, there are defects in the work of the plaintiff and he was required to pay to the department a sum of Rs. 20,364/- on account of defective work, Rs. 96/- on account of stocks issued, Rs. 9,428/- as 10% find due to the incomplete work. And, on its basis the deduction of Rs. 16,717/- from the bills of the plaintiff was pleaded to be justified by the defendant.

5) The trial court on the basis of the pleadings of the parties, framed following issues:

1. ***Whether, the plaintiffs completed the work in accordance with the contract, as alleged?***
2. ***To what amount the plaintiff is entitled?***
3. ***Whether, the work executed by the plaintiff was incomplete and defective, as alleged by the defendant? If so, its value?***

4. ***Whether, the defendant was entitled to deduct a sum of Rs. 16,717/- from the other dues of the plaintiff and get the measurements done?***

5. ***Whether, the defendant is entitled to special costs, as pleaded?***

6. ***To what relief, if any, the plaintiff is entitled?***

6) After recording the evidence and hearing the parties, the trial court found that the plaintiff did complete his work within time and his work was measured by the concerned Engineers. It further found that the allegation of the defendant that the work was incomplete, is wrong. The trial court further found that amount of Rs. 16,717/- was wrongly deducted by the defendant from the account of the plaintiff. It further found that the defendant is not entitled to any special costs, and decreed the suit against the defendant for Rs. 33,984/- with costs. Aggrieved by said judgment and decree dated 17.03.1978, this Appeal was preferred by the defendant (State) before the Allahabad High Court in the year 1978, from where it is received by transfer to this Court , under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

7) Admittedly, the plaintiff / respondent was given contract of job No. 14 for construction of Kilkileshwar Silkakhal road. It is also not disputed between the parties that work according to the contract was to be completed by 12.11.1973. From the evidence on record, it is clear that the plaintiff / respondent completed the work and Mr. Rampal Singh, concerned Junior Engineer, measured the work and made entries in this regard in the measurement

book at serial number 65 / L. It is also clear from the evidence on record that said measurement were verified by Mr. Vasudev Tewari, concerned Assistant Engineer. These were the two officers of the Public Works Department of the defendant / appellant under whom the work was done by the plaintiff / appellant under whom the work was done by the plaintiff / respondent. The defendant / appellant, who alleged that the work was not complete and there were defects in the work, failed to produce either Mr. Rampal Singh, the concerned Junior Engineer or Mr. Vasudev Tewari, the concerned Assistant Engineer, under whom the work is done. Had they been examined, it could have been said that the plaintiff would have an opportunity to cross-examine them as to how they measured the work as complete and why the defects , if any, could not be pointed out by them. Mere examination of Mr. Gairola, Executed Engineer of the defendant / appellant, who was not supervising work in question at the relevant point of time, does not shake the oral evidence adduced by the plaintiff / respondent and the documentary evidence in the form of extract of measurement book on the record.

8) In the above circumstances, the trial court has rightly believed the evidence adduced on behalf of the plaintiff / respondent that the work done by him was complete, as per the measurement book prepared by the Junior Engineer and verified by the Assistant Engineer. The plaintiff / respondent was fully entitled to recover the final bill of Rs. 7,480/- and also the refund of Rs. 9,427/- as security deposit. This Court is in further agreement with the learned Trial Court, that in the above circumstances, 10% fine could not have been imposed on the contractor and the deductions

made by the defendant / appellant were also unjustified and not recoverable from the plaintiff / respondent.

9) For the reasons as discussed above, the impugned judgment and decree passed by learned trial court does not need any interference from this Court. Accordingly, the appeal is liable to be dismissed. The same is dismissed. Costs easy. (All other pending applications in this appeal also stand disposed of).

(Prafulla C. Pant, J.)

Dt: 31st August, 2006.
H.Negi